

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN DAVE LEWIS**, on April 7, 2003 at 9:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Dave Lewis, Chairman (R)
Rep. Rosalie (Rosie) Buzzas, Vice Chairman (D)
Rep. Edith Clark, Vice Chairman (R)
Rep. John Brueggeman (R)
Rep. Tim Callahan (D)
Rep. Stanley (Stan) Fisher (R)
Rep. Eve Franklin (D)
Rep. Dick Haines (R)
Rep. Donald L. Hedges (R)
Rep. Joey Jayne (D)
Rep. Carol C. Juneau (D)
Rep. Dave Kasten (R)
Rep. Christine Kaufmann (D)
Rep. Monica Lindeen (D)
Rep. John Musgrove (D)
Rep. Jeff Pattison (R)
Rep. Rick Ripley (R)
Rep. John Sinrud (R)
Rep. John Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jon Moe, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 218, SB 476, HJ 41, 4/3/2003
Executive Action: HJ 41, SB 218, SB 271, SB 323, SB 451, SB 476,

HEARING ON SB 218

Sponsor: SENATOR WALTER McNUTT, SD 50, Sidney

Opening Statement by Sponsor:

SENATOR McNUTT said the bill was requested by Montana Association of Counties (MACo) early in the session. The bill deals with public defenders and indigent defense.

Proponents' Testimony:

SENATOR WHEAT said there is existing now an Appellate Defender Commission and there is an appellate defender who is attached to the Department of Administration for administrative purposes. The bill creates a state-wide public defender system, trial system and appellate system because they took the Appellate Public Defender Commission and expanded that to include both the trial and appellate defender system. What is now known as the Appellate Defender Commission, if this bill passes, will be the Public Defender system. That is the vehicle for creation of a statewide trial system. **SENATOR WHEAT** referred to and explained Pages 3, 7, 8, 10, 11, 12, 13 and 14 of the bill.

SENATOR DAN MCGEE, SD 11, Laurel, said the general consensus the Senate subcommittee had was to honor the philosophy of state district court assumption. They wanted to insulate and isolate the counties. That is an important consideration. Another important point was an ACLU suit, which is basically challenging the state because there are no statewide standards for public defenders.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 29.5}

The difference in cost, roughly, is going to be \$900,000 to \$1 million a year in excess to go with the Department of Administration to run the public defender's office than it might be under the Supreme Court. This is a major policy decision.

SENATOR JOHN ESP, SD 13, Big Timber, said the fiscal note, and how the contingency account will be handled, should be looked at closely. The ongoing extra expense that is in this program is about \$500,000 a year.

Gordon Morris, Director, MACo, referred to and explained Section 13, Page 13 of the bill.

Norm Grosfield, Attorney, Helena, spoke in favor of the bill.

Chad Wright, Appellate Defender, State of Montana, spoke in support of the bill. The structure of the bill is excellent and is what is needed for public defenders across the state. His only concern is a part of this process was to create an independence from the Judiciary, both financial and appointment independence.

Eric Olson, Attorney, Public Defenders' Office, Great Falls, said he supports the bill, both in concept and in implementation with regard to the budget. There are uncertainties involved on a day-to-day basis with regard to the cost of representing and defending criminal defense. Organized incorporated public defender systems have proven to be more effective and more efficient and ultimately more cost saving in the administration of justice than uncoordinated and un-assumed contract-type systems.

Beth Brenneman, Legal Director, ACLU of Montana, handed out and explained Exhibit 1.

EXHIBIT (aph74a01)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 29.4}

Karla Gray, Chief Justice, Montana Supreme Court, said she appears as a strong proponent of the fundamental policy decision underlined in this bill. She does have a couple substantive concerns about the way the bill is drafted and some from the Judiciary standpoint. The bill is significantly expanding the scope of indigent defense and also expense. The Judicial Branch is still under-funded for state assumption. The fiscal note essentially sets up for 3 FTE accountants for the public defender system. The Judicial Branch has only four accountants for all of statewide assumption. This bill wants to take 2.5 of them.

This leaves her in an awkward position. The bill is the correct policy choice, whether it should have been done last session, whether it can be done this session, or whether it can or should be done next session when they do have the historical data to provide better numbers.

Opponents' Testimony: None

Informational Testimony:

Steve Bender, Deputy Director, Department of Administration, handed out and explained Exhibit 2.

EXHIBIT (aph74a02)

Questions from Committee Members and Responses:

REP. KASTEN said his concern would be; "Why would we not have two members from the public and two attorneys and one judge instead of a judge, three attorneys and one public on the Commission?"

SENATOR ESP said those things can be changed.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.6}

In answer to a question from **REP. PATTISON, Lisa Smith, Supreme Court**, said , "If SB 218 passes, the fiscal note takes 2.5 FTE away from the Judicial Branch. Basically, they can give up 1 of the 2.25 FTE that were just given to them. They do not have 2.5 FTE to let go."

REPS. RIPLEY, WITT, HAINES, FISHER, asked for further explanation from **SENATOR ESP, Ms. Brenneman, Justice Gray, and Mr. Morris.**

{Tape: 2; Side: B; Approx. Time Counter: 0 - 29.4}

REPS. HEDGES and JUNEAU, asked for clarification from **Mr. Bender and Mr. Morris.**

Closing by Sponsor:

SENATOR ESP and **SENATOR McNUTT** closed the hearing on SB 218.

SENATOR ESP said the bill does handle the payoff to the state for the costs that were retained at the county. The division of funds between the court and the defense program is defined.

SENATOR McNUTT said this is a policy decision. There is a lawsuit pending. There are probably some inequities in the way they have perceived with the system of defense for indigents. He has a concern with "the Commission will make the rules" and will meet with the other Senators for clarification.

HEARING ON SB 476

Sponsor: **SENATOR EMILY STONINGTON, SD 15, Bozeman**

Opening Statement by Sponsor:

SENATOR STONINGTON said this is a bill that is coming from the subcommittee on Human Services. This is a piece of what they hope is going to be an improved adult mental health system. They are trying to keep down the number of people who are committed to

the State Mental Health Hospital at Warm Springs. All of the case history in mental health commitments lead them to feel, as a society, that more appropriate treatment happens in communities than in a mental health hospital. All of the effort is to keep people in their communities if there can be an appropriate setting found. This bill creates some incentives to further that process. The State Hospital is the hospital of last resort. The State Hospital in HB 2 is appropriated to have an average patient load of 175 patients. During the last biennium the average was 177. This kind of approach will raise the limits at the State Hospital. This bill requires that the courts solicit a second opinion from the community health centers. Current law says that the community health centers will be available for screening people going into the State Hospital but it doesn't require that the courts use the community health centers for that purpose.

Proponents' Testimony:

Dan Anderson, Administrator, Addictive and Mental Disorders Division, Department of Public Health and Human Services, said, this is a bill where they decide how people get from living in the community to being in Montana State Hospital. The people involved are not criminals nor are they going through a criminal process to get to the State Hospital but are people who's mental illness is so severe that they, as society, step in and require them to seek and accept involuntary treatment.

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This bill provides for a more complete review of the needs of individuals before they are committed to the State Hospital. It provides the consumers, themselves, an additional chance to stay in the communities. These are involuntary processes. Most people don't want to be required to go to the State Hospital so this provides for the consumer, for the patient and an ability to stay in the community. It makes sure they have beds available at the State Hospital for the people who like to be there.

Kathy McGowan, representing the Montana Association of Counties, Montana County Attorneys' Association, Montana Psychiatric Association, Montana Medical Association and the Montana Psychological Association, said they are all proponents of this bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. FRANKLIN asked for further explanation and clarification from **Mr. Anderson**.

Closing by Sponsor:

SENATOR STONINGTON closed the hearing on HB 476.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 29.8}

HEARING ON HJ 41

Sponsor: **REP. MONICA LINDEEN, HD 7, Huntley**

Opening Statement by Sponsor:

REP. LINDEEN said this Resolution asks for an interim study to look at performance-based budgeting. Currently they are using an incremental budgeting process and it is perceived to foster a built-in growth in government with little review of base-budget priorities. Legislators and taxpayers all want better information about the programs that they are funding. They need to have more information about the effectiveness, efficiency and cost-effectiveness of all the programs. State agencies need to be held accountable for the performance of their programs and delivery of their services.

Performance-based budgeting basically involves the allocation of resources to achieve specific objectives and measured results.

Proponents' Testimony:

Joe Williams, Department of Corrections, spoke in favor of the Resolution.

Steve Gibson, Department of Corrections, Juvenile Division, also spoke as a proponent to HJ 41.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

In response to a question from **REP. HEDGES, Clayton Schenck, Legislative Fiscal Division**, said performance-based budgeting is

a system that a number of states are working with. There is a lot of frustration with the existing system and so, hopefully, this process would look at what they are doing now and consider various options, of which the performance-based budgeting might be the ultimate. It would end up with the Legislative Finance Committee and they would have to set the boundaries by which this could be done.

Closing by Sponsor:

REP. LINDEEN closed the hearing on HJ 41.

CHAIRMAN LEWIS announced a break until after House adjournment. The Committee reconvened at 3:15 p.m.

EXHIBIT (aph74a03) handed out by **Jon Moe, Legislative Fiscal Division Staffer**.

EXECUTIVE ACTION ON SB 271

Motion: **REP. BRUEGGEMAN** moved that SB 271 BE CONCURRED IN.

Motion/Vote: **REP. BRUEGGEMAN** moved that SB 271 BE CONCEPTUALLY AMENDED, SUBJECT TO THE LEGAL REVIEW OF LANGUAGE. Motion carried 12-7 with REPS. BUZZAS, FRANKLIN, JAYNE, JUNEAU, KAUFMANN, LINDEEN and MUSGROVE voting no on a voice vote.

Motion/Vote: **REP. BRUEGGEMAN** moved that SB 271 BE CONCURRED IN AS AMENDED. Motion carried 11-8 with REPS. BUZZAS, CALLAHAN, FRANKLIN, JAYNE, JUNEAU, KAUFMANN, LINDEEN and MUSGROVE voting no on a roll call vote.

EXECUTIVE ACTION ON SB 451

Motion: **REP. CLARK** moved that SB 451 BE CONCURRED IN.

Motion/Vote: **REP. CLARK** moved that SB 451 BE AMENDED, SB045102.agp, Exhibit 4. Motion carried 15-4 with REPS. BUZZAS, JAYNE, JUNEAU and KAUFMANN voting no on a voice vote.

EXHIBIT (aph74a04)

Motion/Vote: **REP. JUNEAU** moved that SB 451 BE AMENDED, SB045101.ajm, Exhibit 5. Motion carried 16-4 with REPS. FISHER, HEDGES, PATTISON and WITT voting no on a voice vote.

EXHIBIT (aph74a05)

Motion: REP. CLARK moved that SB 451 BE CONCURRED IN AS AMENDED.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 30.2}

Motion/Vote: REP. LINDEEN moved that SB 451 BE TABLED. Motion carried 14-5 with REPS. CLARK, BRUEGGEMAN, HEDGES, PATTISON and RIPLEY voting no on a roll call vote.

EXECUTIVE ACTION ON HJ 41

Motion/Vote: REP. LINDEEN moved that HJ 41 DO PASS. Motion carried unanimously on a voice vote.

EXECUTIVE ACTION ON SB 323

Motion: REP. PATTISON moved that SB 323 BE CONCURRED IN.

Substitute Motion/Vote: REP. RIPLEY made a substitute motion that SB 323 BE TABLED. Motion carried 18-1 with REP. PATTISON voting no on a roll call vote.

EXECUTIVE ACTION ON SB 476

Motion: REP. CLARK moved that SB 476 BE CONCURRED IN.

Substitute Motion/Vote: REP. FRANKLIN moved that SB 476 BE TABLED, Motion carried 16-3 with REPS. CLARK, BUZZAS and FISHER voting no on a roll call vote.

EXECUTIVE ACTION ON SB 218

Motion: REP. HEDGES moved that SB 218 BE CONCURRED IN.

Substitute Motion/Vote: REP. SINRUD moved that SB 218 BE TABLED. Motion carried 10-9 with REPS. BUZZAS, CALLAHAN, FRANKLIN, HEDGES, JAYNE, JUNEAU, KAUFMANN, LINDEEN and MUSGROVE voting no on a roll call vote.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 10}

ADJOURNMENT

Adjournment: 4:00 P.M.

REP. DAVE LEWIS, Chairman

MARY LOU SCHMITZ, Secretary

DL/MS

EXHIBIT (aph74aad)